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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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ART UNIT	**PAPER NUMBER**
3629	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/532,435	COOPER ET AL.	
	Examiner	Art Unit	
	Jamisue A. Plucinski	3629	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *02 July 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *11-26* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *11-26* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 11, 12, 16-18 and 21-25 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 10/166572 in view of Gendreau (US 2001/0034608). Application '572 discloses the use of optical sensors in the y and the z direction, however discloses non-contact optical sensors in the x direction, and fails to disclose the length (x direction) of the package is measured by the speed of the package and the length of time the package takes to pass by the optical sensors. It is old and well known in the art that lengths of packages are determined by determining the speed of which the package is traveling and the length of time it passes past a sensor, as shown by

Gendreau (Paragraph 0039). Therefore it would have been old and well known within the art of package sizing, to use this method to measure the length of a package on a conveyor system.

3. With respect to Claim 25: Gendreau discloses the use of a system, which further includes a scale (26), where the microprocessor receives the weight and correlates the weight to the size of the package (paragraph 0021).

4. With respect to Claims 17 and 18: See Gendreau, Paragraph 0039.

5. With respect to Claim 12: See Gendreau, Figure 3.

6. With respect to Claim 16:Gendreau discloses the use of a conveyor, however fails to disclose the use of a motor which drives the conveyor. Official notice is taken that it is old and well known in the art that motors are used to drive conveyors, in order to make conveyors automatic. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have a motor driving the conveyor of Gendreau in order to make the conveyor driven automatically.

7. With respect to Claim 21-24: Gendreau discloses the claimed invention, however fails to disclose testing the sensors upon start up and reporting any errors in the sensors. It would have been obvious to one having ordinary skill in the art at the time the invention was made to test the equipment upon start up since the examiner takes official notice that testing equipment for failures and warming up equipment, especially with optical devices, and reporting errors is old and well known in the art. This happens with copiers, fax machines and printers. It must warm up before it prints, copies etc. and will display a message if there is an error.

This is a provisional obviousness-type double patenting rejection.

Claim Objections

8. Claim 11 is objected to because of the following informalities: Claim 11 has multiple grammatical/spelling errors such as "sensors being positioned on at **last (should be least)** an" and "by the package blocking one **of (should be or)** more of said sensors". Appropriate correction is required.

Claim Rejections - 35 USC § 112

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claims 13-15, 19 and 24 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

11. With respect to Claims 13-15 and 19: the independent claim 11 appears to attempt to claim the use of ambient light for the determination of the dimensions of the package. As claimed now, the claim reads that the package merely blocks ambient light, but does not necessarily claim that measuring of ambient light. If the claim were to claim this, then it is unclear what light the sensors measure... the ambient light or the light from the optical signal sources. As stated now the examiner considers the sensors to measure light from the signal sources.

12. Claim 24 recites the limitation "said detected folds" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

14. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

15. Claims 11-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gendreau (US 2001/0034608) in view of Dlugos et al. (5,878,379).

16. With respect to Claims 11 and 20: Gendreau discloses the use of a method and system for determining transportation charges for packages (see abstract), comprising:

a. A reader, which identifies a package, the reader generating a signal and transmitting the signal to a microprocessor (20),

b. A microprocessor which receives package ID and size and determines transportation charges (18),

c. Gendreau discloses the use of a display device, See Figure 1, and computer 18, which the examiner considers to be fully capable of displaying the package parameters such as volume and weight and charge (see corresponding detailed description).

17. Gendreau discloses the use of a package sizer where the length of a package is measured by determining the speed at which the package is traveling and length of time the package passes over a sensor (See Paragraph 0039), and discloses signals and sensors being used for the height and width, (See Figure 3) however fails to disclose the package sizer having a plurality of spaced optical sensors along the y and z axis used to detect the height and width of the package. Dlugos discloses the use of a package sizer, with a plurality of optical sensors along the y and z direction for sizing the width and height of a package (See Figures 1-5, with corresponding detailed descriptions, Column 7, line 52 to Column 8 line 9; Dlugos discloses the package is close to or blocking the sensor, therefore it blocks the ambient light as well from getting to the sensor). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Gendreau to include the sizer of Dlugos, in order to ensure accuracy of measurements of objects on a conveyor. (See Dlugos, abstract)

18. With respect to Claim 25: Gendreau discloses the use of a system, which further includes a scale (26), where the microprocessor receives the weight and correlates the weight to the size of the package (paragraph 0021).

19. With respect to Claims 11, 17 and 18: See Gendreau, Paragraph 0039.

20. With respect to Claim 12: See Gendreau, Figure 3.

21. With respect to Claim 13: See Dlugos, Column 7, line 52 to Column 8, line 9.

22. With respect to Claims 14 and 15: Dlugos discloses the use of sensor guards (Column 8, lines 10-33).

23. With respect to Claim 16:Gendreau discloses the use of a conveyor, however fails to disclose the use of a motor which drives the conveyor. Official notice is taken that it is old and well known in the art that motors are used to drive conveyors, in order to make conveyors automatic. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have a motor driving the conveyor of Gendreau in order to make the conveyor driven automatically.

24. With respect to Claim 19: See Dlugos, Column 10, lines 50-64, and reference numerals 82-88, with corresponding detailed descriptions.

25. With respect to Claim 21-24: Gendreau and Dlugos discloses the claimed invention, however fails to disclose testing the sensors upon start up and reporting any errors in the sensors. It would have been obvious to one having ordinary skill in the art at the time the invention was made to test the equipment upon start up since the examiner takes official notice that testing equipment for failures and warming up equipment, especially with optical devices, and reporting errors is old and well known in the art. This happens with copiers, fax machines and printers. It must warm up before it prints, copies etc. and will display a message if there is an error.

26. With respect to Claim 26: See Dlugos, Column 10, lines 36-64.

Response to Arguments

27. Applicant's arguments filed 7/2/07 have been fully considered but they are not persuasive.

28. With respect to the applicant's argument that the double patenting rejection should be dropped due to the cancellation of the claims. However a new Double Patenting rejection has been applied to the newly amended independent claim.

29. With respect to Applicant's argument that Claim 11 has been rewritten and specifies that the width of the package is determined by blocking one or more sensors positioned along the y axis to reduce the amount of ambient light reaching one or more sensors. As stated above, the way the claim 11 is written, the sensors may be blocked from ambient light, which would happen, but the amount of ambient light is never measured, to determine the width, it is merely stated the package reduces the amount of ambient light, the method of having a light source and a sensor detecting the light source, as taught in Dlugos, can still read on the claimed invention. Furthermore, in the independent claims, they claim that there is a light source, or signal, that is detected by the optical sensors, to determine the width, not the ambient light. Due to the fact that the claims do not positively recite measuring the reduction in ambient light to determine the width, and further go on to claim a signal being sent to the sensor, which is blocked by the package. The arguments are not considered to be persuasive and the rejection stands as stated above.

Conclusion

30. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jamisue A. Plucinski whose telephone number is (571) 272-6811. The examiner can normally be reached on M-Th (5:30 - 4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jamisue Plucinski
Primary Examiner
Art Unit 3629